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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/754,427

01/09/2004

James B. Sullivan

022-0008US

8412

29855

7590

06/10/2009

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EXAMINER

ALMATRAHI, FARIS S

ART UNIT

PAPER NUMBER

3627

MAIL DATE

DELIVERY MODE

06/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/754,427	<b>Applicant(s)</b> SULLIVAN ET AL.	
	<b>Examiner</b> FARIS ALMATRAHI	<b>Art Unit</b> 3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 46-54 is/are pending in the application.
- 4a) Of the above claim(s) 46-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the Application***

1. This action is in reply to applicant amendment filed February 25, 2009.
2. Claims 1 and 8 have been amended.
3. Claims 12-45 have been cancelled.
4. Claims 46-54 are new.
5. Claims 1-11 and 46-54 are pending in this application.

### ***Restriction by Original Presentation***

Newly submitted claims 46-54 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: New claims are directed to receiving transaction communication.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 46-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3627

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-11** are rejected under 35 U.S.C. 102(b) as being anticipated by Kumar et al. (US Publication No. 2002/0143634 A1).

8. Regarding claim 1, Kumar discloses a method of performing a retail transaction, comprising: initiating a customer-independent transaction detail communication from a retail system to a transaction authorization system (Abstract); initiating a customer wireless communication from a customer-controlled wireless communication device to the transaction authorization system (Abstract); matching the customer wireless communication with the transaction detail communication (Abstract); and identifying a customer account associated with the customer wireless communication (Paragraph [0040]); and authorizing the retail transaction to the retail system (Abstract).

9. Regarding claims 2-7, Kumar discloses a method further comprising: supplying a customer-independent token to the retail system (Paragraphs [0027], [0031], [0038] – [0039]).

10. Regarding claim 8, Kumar discloses a method wherein the retail system is a POS system, and wherein the POS system can perform the retail transaction without modification (Abstract).

11. Regarding claim 9, Kumar discloses a method wherein the customer-controlled wireless communication device is a wireless telephone (Abstract).

12. Regarding claim 10, Kumar discloses a method wherein the customer account is a private label credit account (Abstract, Paragraph [0029]).

Art Unit: 3627

13. Regarding claim 11, Kumar discloses a method wherein authorizing the retail transaction comprising: modifying the retail transaction to reference the customer account (Abstract, Paragraph [0040], [0049]).

### ***Response to Arguments***

14. Applicant's arguments filed on February 25, 2009 have been fully considered but they are not persuasive

15. Regarding Applicants arguments that *Kumar fails to teach initiating a customer-independent transaction detail communication from a retail system to a transaction authorization system*. The examiner respectfully disagrees. Kumar discloses that a first communications link is used between the merchant and the computer approval system and a first customer identification code given by the customer to the merchant is transmitted over the first communications link to the computer approval system which reads on initiating a customer-independent transaction detail communication from a retail system to a transaction authorization system (Abstract). In regards to applicants argument that the transaction of Kumar is not customer-independent, Examiner points out that the phrase "customer-independent" as currently recited in the instant claim was interpreted to read on the communication from a retail system to be customer-independent.

16. Regarding Applicants arguments that *Kumar fails to teach initiating a customer wireless communication from a customer-controlled wireless communication device to the transaction authorization system*. The examiner respectfully disagrees. Kumar

Art Unit: 3627

discloses a second communications link used to initiate a communication between a customer-controlled wireless device and a transaction authorization system (Abstract).

In regards to Applicant's argument that the communication is not initiated by a customer device, Examiner points out that the limitation as currently phrased is not recited to restrict initiation of the communication to the customer device. The limitation as phrased is interpreted to initiate a customer wireless communication between a customer controlled wireless device and a transition authorization system. Applicant is advised to reconstruct claim language to clarify the initiation being performed by the customer device.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3627

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faris Almatrahi whose telephone number is (571)270-3326. The examiner can normally be reached on Monday to Friday 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Faris Almatrahi  
Examiner  
Art Unit 3627

FA  
/F. Ryan Zeender/  
Supervisory Patent Examiner, Art Unit 3627